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7 **UNITED STATES DISTRICT COURT**
8 **CENTRAL DISTRICT OF CALIFORNIA**
9 **WESTERN DIVISION**

10 UNITED STATES OF AMERICA,

11 Plaintiff,

12 v.

13 JOSE ARVISO,

14 Defendant.

15 Case No. CR 17-00018-CAS

16 **MOTION IN LIMINE TO EXCLUDE**
CONTRABAND

17 **HON. CHRISTINA SNYDER**

18 PLEASE TAKE NOTICE that Jose Arviso (“Mr. Arviso”) by and through his
19 counsel of record, Michael Devereux, respectfully moves this Court to pursuant to
20 the Fed.R.Evid. 401, for an order excluding any evidence related to the contraband
21 seized and contributed to Mr. Arviso. This motion is based on Fed. R. Evid.401-
22 403, 801-803 and 901, the Sixth Amendment Confrontation Clause, Defendants’
23 presumption of innocence, and the fact that the hearsay-reliant testimony constitutes
24 impermissible vouching.

1 **I. THE GOVERNMENT CANNOT AUTHENTICATE THE CONTRABAND**

2 Physical evidence must be authenticated before a court may admit it at trial. A
3 piece of physical evidence that has not been authenticated is not relevant under Rule
4 401 because “evidence cannot have a tendency to make the existence of a disputed fact
5 more or less likely if the evidence is not what which the proponent claims[.]” United
6 States v. Branch, 970 F.2d 1368, 1370 (4th Cir. 1992). “To satisfy the requirement of
7 authenticating or identifying an item of evidence, the proponent must produce evidence
8 sufficient to support a finding that the item is what the proponent claims it is.” Fed. R.
9 Evid. 901(a).

10 As the Ninth Circuit has explained,

11 *In other words, the party offering the evidence must make a *prima facie*
12 showing of authenticity so that a reasonable juror could find in favor of
13 authenticity or identification.*

14 *United States v. Gadson*, 763 F.3d 1189, 1203-04 (9th Cir. 2014) (internal
15 quotation omitted).

16 As part of the authentication requirement, when physical evidence is “connected
17 with the commission of a crime, the proponent must also establish the chain of
18 custody.” *United States v. Harrington*, 923 F.2d 1371, 1374 (9th Cir. 1991) (citing
19 *Gallego v. United States*, 276 F.2d 914, 917 (9th Cir. 1960)). A district court may admit
20 items of physical evidence if the Government establishes that they are in “substantially
21 the same condition” as when they were seized[,]” and “there is a reasonable probability
22 the article has not been changed in important respects.” *Id.* (internal quotations
23 omitted).

24 Here, the Government cannot authenticate the alleged drugs seized by California
25 Department of Corrections and Rehabilitation (“CDCR”) on or about March 25, 2016.
26 The package from LAPD, property number P002004933, clearly has clearly crossed out
27 the name of Arviso and replaced it with Olivia Uribe, booking number 4617226. See
28 Exhibit “A.” Mr. Arviso’s booking number was 4617240. Subsequently, the

1 contraband was analyzed by David Purdy on March 30, 2016. Then on May 11, 2016,
2 the contraband was allegedly released to the US Postal Inspector. However, sixty days
3 after the initial arrest, on May 25, 2016, a property report attributes the same narcotics
4 to Mr. Arviso.

5 The reports and chain of custody documents produced by the Government
6 provide no explanation for the change in custody. That discrepancy means that the
7 Government cannot authenticate the contraband and it cannot establish chain of
8 custody, in violation of Rule 901(a). Moreover, the Government, for the same reasons,
9 cannot authenticate the alleged drugs, property number P002004932, seized on the
10 same date and also contributed to Olivia Uribe. *See Exhibit “B.”*

11 First, the Government cannot establish a *prima facie* case that contraband in
12 evidence and seized by CDCR on or about March 26, 2016 is attributed to Mr. Arviso.

13 **The Government has no explanation for the later discrepancy or how the contraband**
14 **initially came into the possession of the LAPD.** In the absence of such an explanation,
15 a reasonable juror could not find that the contraband was attributed to Mr. Arviso. *See*
16 *infra*, §§ A-C.

17 Second, the Government cannot meet its burden to show the chain of custody.
18 CDCR allegedly seized the items and arrested the Defendants. LAPD transported the
19 Defendants for booking. There is no chain of custody from CDCR to LAPD. The
20 Government has produced no evidence to explain what happened from the time of the
21 seizure from CDCR to the LAPD booking.

Government cannot establish within a reasonable probability that the remaining contraband was the same contraband that was seized by CDCR. Even if they are the same, the Government cannot establish that they are in substantially the same condition as when they were seized in light of the unexplained evidence of tampering with the shipment.

A. Transportation and Booking Were The Only Role of the LAPD - Therefore, the LAPD Were Not Percipient Witnesses to Probable Cause of Any of the Allegations

The role of the LAPD was exclusively limited to transporting and booking the Defendants. When the LAPD arrived, the Defendants were already detained and handcuffed waiting for transportation and booking. Neither the LAPD, nor any of its officers, witnessed any of the activities/allegations contained within the First Superseding Indictment.

B. Agents from CDCR Were the Only Percipient Witnesses to Probable Cause of the Allegations Contained in the First Superseding Indictment

Agents from the California Department of Corrections and Rehabilitation (“CDCR”) were the percipient witnesses to the purported probable cause for the arrests. After CDCR made the arrests, CDCR first contacted the Pasadena Police Department to transport and book the Defendants. However, the Pasadena Police Department declined to assist CDCR for reasons unknown. Next, CDCR then contacted LAPD Northeast Division (“LAPDNE”). LAPDNE declined to transport the Defendants but did offer to book the Defendants for CDCR provided that CDCR

1 would find transportation. Later LAPD Metro Division agreed to transport the
2 Defendants to LAPDNE. The Defendants were then booked at LAPDNE.
3

4 Despite not being a percipient witness, a Probable Cause Determination
5 Declaration (PC Declaration) was provided to the Superior Court in 2016 and signed by
6 LAPD Officer John Hackman of the Metropolitan Division, Crime Impact Team
7 (“LAPD Hackman”). In the police report, which appears to have been included /
8 attached to the PC Declaration by LAPD, Hackman clearly states that:

9
10 *On 03/25/2016 at approximately 1100 hours we received a
11 telephone call from the CDCR Fugitive Apprehension Team, who
12 advised us that they had located defendants Arviso and Uribe at 3321
13 East Colorado Boulevard in the City of Pasadena at the Hotel Le Reve.
14 Crime Impact Team Members, Sgt. II Yzaguirre #27097, Officer's
15 Medina #38584, Flores #37687, Hackman #38575, and I, responded
16 to the Hotel Le Reve in Pasadena. Upon arrival we were met by CDCR
17 Agents J. Barron. #52813, R. Jones, W. Braden, V. Carbajal, and T.
18 Ohno. Agent Barron advised me that they had defendants Arviso, Uribe
19 and Cobarrubias in custody. Defendants Arviso, Uribe and
20 Cobarrubias were all transported to Northeast Station pending
21 further investigation.*

22 **C. No Reports - No Statement(s) of Probable Cause Were Provided by
23 CDCR**

24 The entirety of the police report contains LAPD Hackman's interpretation of
25 CDCR Agent J. Barron's (“CDCR Barron”) statements. Moreover, neither LAPD
26 Hackman nor any other LAPD Officer were percipient witnesses of the facts
27 contained in the police report written by the LAPD.
28

Counsel has requested a copy of the CDCR report, only to be informed that the government has no such document and no relevant document for that matter from the CDCR.

II. CONCLUSION

Defendant respectfully requests that this Court exclude the any evidence related to the CDCR seizure on or about March 25, 2016 (including any references thereto) because the Government cannot authenticate them by establishing the chain of custody, in violation of Rule 901(a).

Respectfully submitted,

DATED: December 1, 2021

By */s/ Michael S. Devereux*

Michael S. Devereux
Attorney for
JOSE ARVISO